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of the Governor General in Council, that it is indicated by a comparison of the phraseology of s. 22 of the 24 & 25 Vict., c. 67, with the phraseology of the 3 & 4 Will. IV, c. 85, s. 43, *that the High Courts were not to be subject to any* legislative authority in India. The difference in the two sections is, that whilst the former Act expressly declares all Courts to be so subject, in the latter Act these words are omitted. I do not think that it is a sound method of construing Acts of Parliament to control the effects of general powers which are conferred, because special powers are *not* conferred. To confer any special powers was in this case wholly unnecessary, and the Legislature may well have thought when passing the second Act that it was a mere waste of words to do so. Nor indeed does this argument, even if sound, affect my view of the matter, for the power of the Governor General in Council to legislate for the High Courts rests in my opinion not on the 24 & 25 Vict., c. 67, but on the 24 & 25 Vict., c. 104.

For all these reasons it seems to me that this application must be rejected with costs.

Application refused.

APPELLATE CRIMINAL.

Before Mr. Justice Macpherson and Mr. Justice Morris.

THE QUEEN *v.* BAIJOO LALL AND OTHERS.

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August 23.

IN THE MATTER OF THE PETITION OF BAIJOO LALL AND ANOTHER.*

Criminal Procedure Code (Act X of 1872), s. 471—Act XXIII of 1861, s. 16—Order sending Case to Magistrate for enquiring into Offence of giving false Evidence—Preliminary Enquiry—Vagueness of Charge.

Although s. 16 of Act XXIII of 1861 gives Civil Courts powers similar to those conferred on Civil and Criminal Courts alike by s. 471 of the Criminal Procedure Code, the whole law as to the procedure in cases within those sections is now embodied in s. 471 of the Criminal Procedure Code.

In a suit brought to recover possession of certain property, the Judge decided one of the issues raised in the plaintiff's favor, but on the important

* Criminal Motion, No. 189 of 1876, against the order of the Judge of Zilla Gya, dated the 22nd June 1876.

issue as to whether the plaintiff ever had possession, he found for the defendant. The plaintiff was not examined, but on the issue as to possession he called two witnesses. The Judge disbelieved their statements, and considering that the plaintiff had failed to prove his case, he gave judgment for the defendant, without requiring him to give evidence on that issue. In the concluding paragraph of his judgment, the Judge directed the depositions of the two witnesses above referred to, together with the English memoranda of their evidence, to be sent to the Magistrate with a view to his enquiring whether or not they had voluntarily given false evidence in a judicial proceeding, and he further directed the Magistrate to enquire whether or not the plaintiff had abetted the offence of giving false evidence, on the ground that as the witnesses were the plaintiff's servants he must personally have influenced them, and also to enquire whether the plaint which the plaintiff had attested contained averments which he knew to be false. On a motion to quash this order, *held*, that under s. 471 of the Criminal Procedure Code, the Judge has no power to send a case to a Magistrate except when, after having made such preliminary enquiry as may be necessary, he is of opinion that there is sufficient ground (*i.e.*, ground of a nature higher than mere surmise or suspicion) for directing judicial enquiry into the matter of a specific charge, and that the Judge is bound to indicate the particular statements or averments in respect of which he considers that there is ground for a charge into which the Magistrate ought to enquire, and that the order was bad because the Judge had made no preliminary enquiry and because it was too vague and general in its character.

THIS was an application to quash an order of the Judge of Gya sending the plaintiff in a Civil suit and two of his witnesses to a Magistrate for enquiry into charges of giving false evidence and of abetment of that offence. In that suit the present petitioner Baijoo Lall sought to recover possession of certain property from which he alleged the defendant in the suit had illegally evicted him. He claimed as sub-lessee of one Rajun Kunwar who, he stated, was lessee of the property under Ranee Sunut Kunwar the owner thereof. Amongst other issues raised in the case was an issue as to whether Ranee Sunut Kunwar had executed any lease to Rajun Kunwar: another issue was whether the plaintiff had ever been in possession. Evidence was gone into at the trial, and the Judge decided the former issue in favor of the plaintiff, but on the important issue as to possession he found for the defendant; and for that reason he dismissed the suit. Upon the issue as to possession no witnesses were called for the defendant, and the only witnesses called for the

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plaintiff were two persons, Juggernath Singh and Nowrangi Lall, the former of whom joined in the present application. The Judge disbelieved the statements of these two witnesses, and, considering that the plaintiff had failed to prove his case, gave judgment for the defendant without calling upon him to go into evidence on that issue.

In the concluding paragraph of his judgment the Judge ordered as follows:—

"The depositions of Juggernath Singh and Nowrangi Lall, together with the English memoranda of their evidence, will be sent to the Magistrate with a view to his enquiring whether or not they have voluntarily given false evidence in a judicial proceeding; and as the witnesses are the servants of the plaintiff in this suit, Baijoo Lall, he must presumably have influenced them. I further direct that an enquiry be made by the Magistrate whether or not the said Baijoo Lall has abetted the offence of giving false evidence in a judicial proceeding; and also whether the plaint, which he has attested, contains an averment which he knew to be false. In the course of that enquiry it may be well that the Magistrate should examine those witnesses who were cited by the defendants to rebut the plaintiff's allegation of possession, but whom I considered it unnecessary to examine as the plaintiff's witnesses so completely broke down."

The petitioners Baijoo Lall and Juggernath Singh now moved the High Court to quash this order on the following grounds:—That there was no evidence to show that the statements of Juggernath Singh were false or that Baijoo Lall had abetted the offence of giving false evidence, and the mere circumstance that his witnesses had deposed in his favor did not warrant the inference that he had abetted such an offence; that the enquiry as to whether the plaint contained an averment which the plaintiff knew to be false was too general and vague, especially where important issues had been decided in the plaintiff's favor; that the Judge had failed to comply with the requirements of s. 471 of the Code of Criminal Procedure, and had made no preliminary enquiry, nor recorded any proceeding showing that he was of opinion that there was sufficient ground

for enquiring into the charge; that the order should have specified the particular acts or statements which constituted the offence charged; that his reasons for disbelieving the evidence were highly conjectural, and that it was beyond the scope and object of the law that such prosecutions should be allowed upon such reasons, and that the order was made without jurisdiction.

Upon this motion the High Court sent for the record and called upon the Judge to show cause why his order should not be set aside.

In his return to the High Court the Judge stated that he had made the order in exercise of the powers vested in the Court by s. 16 of Act XXIII of 1861; that he made no preliminary enquiry as the statement of the witnesses and their demeanour satisfied him that they had given false evidence, and he submitted that "the necessity or the reverse which existed for a Magisterial enquiry was all that the preliminary enquiry of the Civil Court could decide;" and that "the framing of a technical charge was the duty of the Magistrate, and not of the Court directing the Magistrate to hold an enquiry; the duty of the Court was limited to a reasonable indication of the nature of the offence to be enquired into."

Mr. *C. Gregory* for the Crown showed cause.

Mr. *Branson* and Mr. *Sandel* in support of the rule.

The judgment of the Court was delivered by

MACPHERSON, J.—This is an application to quash an order of the Judge of Gya, under s. 471 of the Criminal Procedure Code, sending the plaintiff in a Civil suit and two of his witnesses to a Magistrate for enquiry into charges of giving false evidence, &c.

I say the order was made under s. 471 of the Criminal Procedure Code, because although s. 16 of Act XXIII of 1861 gives Civil Courts powers similar to those conferred on Civil and Criminal Courts alike by s. 471, there can be no doubt that the whole law is now embodied in s. 471, and our

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jurisdiction to interfere in the matter is not affected by a suggestion that the order in question was, or might have been, made under s. 16 of Act XXIII of 1861 and not under s. 471.

(The learned Judge stated the facts of the case and continued.)

It is contended for Baijoo Lall and Juggernath that the Judge had no power to make that order, inasmuch as he never made any preliminary enquiry and had no sufficient ground on which to base such an order as required by s. 471.

We think the objection is valid, and that the Judge had no jurisdiction to deal with these persons as he did. As regards Juggernath, although the Judge disbelieved his evidence, no witness had been called to contradict him. And as regards Baijoo Lall he was not examined before the Judge at all, and there is absolutely nothing to show that he abetted the offence of giving false evidence excepting the one naked fact that he was the plaintiff in the cause. The Judge says he must presumably have influenced his own witnesses. There is no such legal presumption, and we may add that if there were, it would put an end to litigation in the Civil Courts, for no plaintiff would be safe. The Judge, because he disbelieved the two witnesses called for the plaintiff, considered no "preliminary enquiry" necessary. But that is in contravention of the law: for the law permits the Judge to send the case on to the Magistrate only if, after having made such a preliminary enquiry as may be necessary, he is of opinion that there is sufficient ground (*i.e.*, ground of a nature higher than mere surmise or suspicion) for directing judicial enquiry into the matter of a specific charge.

That the Judge did not make any preliminary enquiry and did not know what specific charges he wanted the Magistrate to enquire into is clear. The Magistrate is directed to enquire generally whether or not the two witnesses have voluntarily given false evidence in a judicial proceeding, and as regards Baijoo Lall, "whether the plaint which he has attested contains an averment which he knew to be false." S. 471 does not warrant the Judge in issuing a general roving commission such as this to a Magistrate to inquire

generally into the truth or falsehood of depositions or of averments in a plaint, and the Judge was bound to indicate the particular statements or averments in respect of which he considered that there was ground for a charge into which the Magistrate ought to enquire. The Judge says, "The duty of this Court was limited to a reasonable indication of the nature of the offence to be enquired into" and again, "the necessity or the reverse which existed for a Magisterial enquiry was, I submit, all that the preliminary enquiry of the Civil Court could decide." We think that this view of the law is incorrect. Something more than a mere indication that a witness has spoken falsely is needed before a Civil Court is justified in initiating a prosecution for giving false evidence. There must be, it seems to us, evidence of a direct and substantive nature before the Court, evidence going to show that the statement made by the witness is absolutely false. There must be in the words of the law "sufficient ground" for enquiring into the matter of a specific charge.

Altogether, we think that the Judge's order is bad, he having made no preliminary enquiry as was clearly necessary, and the order being too vague and general in its character. In thus deciding, we follow the course taken in the case of *Kali Prosunno Bagchee* (1).

The power given by s. 471 should be used with care and after due consideration. And it is by no means in every instance in which a party fails to prove his case, that the Judge who has decided against such party is justified in exercising the powers given him by this section. So long as it is a case as to which there is any possible doubt, or in which it is not perfectly certain that the Judge's decision must be upheld in the event of there being an appeal in the Civil suit, the Judge acts indiscreetly and wrongly if the moment he has given his judgment in the Civil suit he exercises the power given him by this section. At the same time, if in the course of the civil trial the Judge has before him clear and unmistakable proof of a criminal offence, and if, after the trial is over, he on consideration thinks it necessary to proceed at once, of course it may be right to do so.

(1) 23 W. R., Cr. Rul., 39.

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Judges should however bear in mind that criminal prosecutions are frequently suggested by successful litigants merely to prevent an appeal in the Civil suit; and they should be careful not to lend themselves to such suggestions too readily. They should also recollect that when they proceed under s. 471, the responsibility for the prosecution rests upon the Judge entirely; such a prosecution being a very different thing from a prosecution instituted on the complaint of a private party and merely sanctioned by the Court under s. 468.

Order quashed.

APPELLATE CIVIL.

Before Mr. Justice Markby and Mr. Justice McDonell.

1876
July 3.

RAM NEEDHEE KOONDOO (PLAINTIFF) *v.* RAJAH RUGHOO NATH NARAIN MULLO AND ANOTHER (DEFENDANTS).*

Declaratory Decree—Consequential Relief—Act VIII of 1859, *s.* 15—*Jurisdiction of Civil Courts.*

A granted a lease of his entire property to the plaintiff for a term of years, with power to enhance the rents and make settlements. Immediately after *A* executed a pottah in favor of *B*, covering a portion of the same estate, whereby *B's* rent was to remain unchanged for a period conterminous with the plaintiff's lease. In a suit by the plaintiff against *B* and *A's* representative to have the pottah set aside, it was objected that, inasmuch as the deed had not been as yet set up against the plaintiff, nor any injury shown to have been occasioned to him thereby, he had no cause of action: *held* that the suit was maintainable.

In laying down the rule that "a declaratory decree cannot be made, unless there be a right to consequential relief," the Privy Council did not intend to deny to the Courts of this country the power to grant decrees in any case in which, independently of the provisions of Act VIII of 1859, s. 15, they had the power to grant a decree. This power is generally the same as that of the Court of Chancery in England.

SUIT to set aside a pottah, dated the 1st Srabun 1280 (15th July 1873), executed by the late Rajah Bikramajit Mulla, zemindar, in favor of Suroop Mahto, the first defendant.

* Special Appeal, No. 385 of 1876, against a decree of the Judge of Zilla Midnapore, dated the 26th of February 1876, reversing a decree of the Officiating Munsif of that district, dated the 3rd of September 1875.